

AMENDED IN ASSEMBLY MARCH 30, 2011

AMENDED IN ASSEMBLY MARCH 21, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 476

Introduced by Assembly Member Bonnie Lowenthal

February 15, 2011

An act to amend Section 22513 of, and to add Section 34625 to, the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 476, as amended, Bonnie Lowenthal. Vehicles: tow trucks: illegal operation: impoundment and release.

(1) Existing law authorizes the owner or operator of a tow truck who complies with the specified requirements of the Vehicle Code relating to tow trucks to stop or park the tow truck upon a highway for the purpose of rendering assistance to a disabled vehicle, but prohibits the owner or operator from soliciting an engagement for towing services or moving a vehicle without proper authorization, unless exempted as specified. A violation of these provisions is a misdemeanor.

This bill would delete the exemptions from these provisions *reference to an owner or operator of a tow truck* and would *instead* provide that a tow truck driver or an owner-operator of a tow truck who violates these prohibitions is, in addition to being guilty of a misdemeanor, subject to punishment by having the tow truck impounded for a period of 30 days and a \$2,500 fine.

(2) Existing law authorizes a member of the Department of the California Highway Patrol to impound a vehicle or combination of vehicles operated by a motor carrier of property, when the vehicle or

combination of vehicles is found upon a highway, any public lands, or an offstreet parking facility and the motor carrier is found to be operating, either independently or for another motor carrier, after its motor carrier permit has been suspended by the Department of Motor Vehicles. A motor carrier of property that violates this provision is guilty of a misdemeanor, punishable by a fine of not more than \$2,500, or by imprisonment in the county jail for not more than three months, or by both that fine and imprisonment.

~~This bill would require, upon the request of a local law enforcement officer, a tow truck driver or an owner-operator of a tow truck to provide to the local law enforcement officer a copy of a valid motor carrier permit and would require a tow truck driver or an owner-operator of a tow truck to display in a conspicuous place on both the right and left sides of a tow truck the business address and telephone number of the company or the owner or operator, as specified. The bill would make a violation of these provisions a misdemeanor punishable by the impoundment of the tow truck for 30 days and a fine not to exceed \$2,500.~~

The bill would authorize the law enforcement agency, an impounding agency, or the person in possession of the tow truck, or any person acting on behalf of that agency or person to release a tow-truck, before the expiration of that 30-day period to the registered or legal owner or his or her agent only if certain conditions are met, including, but not limited to, the requirement that the legal owner or the legal owner's agent pay all towing and storage fees related to the impoundment of the tow truck. The bill would require the impounding agency to remain open to issue a release to the registered owner or legal owner of a tow truck whenever the agency is open to serve the public for regular, nonemergency business.

The bill would require specified facilities where impounded tow trucks are stored to accept valid bank credit cards, as defined, or cash as payment for towing, storage, and related fees and would make the facility civilly liable, as specified, for a failure to do so. The bill would make it a misdemeanor for a legal owner of an impounded tow truck to knowingly release the tow truck to the registered owner of the tow truck in certain circumstances. The bill would impose additional requirements with respect to the release of an impounded tow truck.

By creating new crimes, the bill would impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 22513 of the Vehicle Code is amended
2 to read:

3 22513. (a) Except as provided in subdivision (b) or (c), a tow
4 truck driver ~~or an owner-operator of a tow truck~~ who complies
5 with the requirements of this code relating to tow trucks may stop
6 or park the tow truck upon a highway for the purpose of rendering
7 assistance to a disabled vehicle.

8 (b) It is a misdemeanor for a tow truck driver ~~or an~~
9 ~~owner-operator of a tow truck~~ to stop at the scene of an accident
10 or near a disabled vehicle for the purpose of soliciting an
11 engagement for towing services, either directly or indirectly, or to
12 furnish any towing services, unless summoned to the scene,
13 requested to stop, or flagged down by the owner or operator of the
14 disabled vehicle or requested to perform the service by a law
15 enforcement agency pursuant to that agency's procedures.

16 (c) It is a misdemeanor for a tow truck driver ~~or an~~
17 ~~owner-operator of a tow truck~~ to move any vehicle from a highway,
18 street, or public property without the express authorization of the
19 owner or operator of the vehicle or a law enforcement officer or
20 public agency pursuant to that agency's procedures, when the
21 vehicle has been left unattended or when there is an injury as the
22 result of an accident.

23 (d) *This section shall not apply to the following:*

24 (1) *A vehicle owned or operated by, or under contract to, a*
25 *motor club, as defined by Section 12142 of the Insurance Code,*
26 *which stops to provide services for which compensation is neither*
27 *requested nor received, provided that those services may not*
28 *include towing other than that which may be necessary to remove*
29 *the vehicle to the nearest safe shoulder. The owner or operator of*
30 *such a vehicle may contact a law enforcement agency or other*

1 *public agency on behalf of a motorist, but may not refer a motorist*
2 *to a tow truck owner or operator, unless the motorist is a member*
3 *of the motor club, the motorist is referred to a tow truck owner or*
4 *operator under contract to the motor club, and, if there is a*
5 *dispatch facility which services the area and is owned or operated*
6 *by the motor club, the referral is made through that dispatch*
7 *facility.*

8 (2) *A tow truck operator employed by a law enforcement agency*
9 *or other public agency.*

10 (3) *A tow truck owner or operator acting under contract with*
11 *a law enforcement or other public agency to abate abandoned*
12 *vehicles, or to provide towing service or emergency road service*
13 *to motorists while involved in freeway service patrol operations,*
14 *to the extent authorized by law.*

15 ~~(d)~~

16 ~~(e) (1) A tow truck driver or an owner-operator of a tow truck~~
17 ~~who violates either subdivision (b) or (c) shall have~~ *be punished*
18 ~~by having the tow truck impounded for a period of not less than~~
19 ~~30 days and shall pay a fine not to exceed two thousand five~~
20 ~~hundred dollars (\$2,500).~~

21 (2) *A tow truck impounded under paragraph (1) shall be*
22 *processed for release pursuant to subdivision (a) of Section*
23 *34625.*

24 SEC. 2. Section 34625 is added to the Vehicle Code, to read:

25 ~~34625. (a) (1) Upon the request of a local law enforcement~~
26 ~~officer, a tow truck driver or an owner-operator of a tow truck~~
27 ~~shall provide to the local law enforcement officer a copy of a valid~~
28 ~~motor carrier permit. A violation of this section is a misdemeanor~~
29 ~~punishable by the impoundment of the tow truck for 30 days and~~
30 ~~a fine not to exceed two thousand five hundred dollars (\$2,500).~~

31 ~~(2) It is not a violation of this subdivision if the copy of the~~
32 ~~motor carrier permit that is provided is expired for less than 60~~
33 ~~days.~~

34 ~~(b) A tow truck driver or an owner-operator of a tow truck shall~~
35 ~~display in a conspicuous place on both the right and left sides of~~
36 ~~a tow truck the business address and telephone number of the~~
37 ~~company or the owner or operator pursuant to Section 27907. A~~
38 ~~violation of this section is a misdemeanor punishable by the~~
39 ~~impoundment of the tow truck for 30 days and a fine not to exceed~~
40 ~~two thousand five hundred dollars (\$2,500).~~

(e)

34625. (a) (1) An impounding agency impounding a tow truck pursuant to this section shall send, within two working days of impoundment, a notice by certified mail, return receipt requested, to the legal owner of the tow truck, at an address obtained from the department, informing the owner that the tow truck has been impounded. Failure to notify the legal owner within two working days shall prohibit the impounding agency from charging for more than 15 days' impoundment when a legal owner redeems the impounded tow truck. The law enforcement agency shall be open to issue a release to the registered owner or legal owner, or the agent of either, whenever the agency is open to serve the public for regular, nonemergency business.

(2) The impounding agency shall release a tow truck to the registered owner or his or her agent prior to the end of the impoundment period under ~~any~~ *either* of the following circumstances:

(A) When the vehicle is a stolen vehicle.

(B) When the vehicle was seized under this section for an offense that does not authorize the seizure of the vehicle.

(3) A tow truck shall not be released under this subdivision, except upon presentation of the registered owner's or agent's currently valid license to operate the vehicle ~~under the licensing requirements adopted by the local authority under subdivision (g) of Section 21100~~, and proof of current vehicle registration, or upon order of a court.

(4) Whenever a tow truck is impounded under this section, the impounding agency shall provide the vehicle's registered and legal owners of record, or their agents, with the opportunity for a poststorage hearing to determine the validity of the storage.

(5) A notice of the storage shall be mailed or personally delivered to the registered and legal owners within 48 hours after the impoundment, excluding weekends and holidays, by the impounding agency, and shall include all of the following information:

(A) The name, address, and telephone number of the agency providing the notice.

(B) The location of the place of storage and a description of the tow truck, which shall include, if available, the name or make, the

1 manufacturer, the license plate number, and the mileage of the tow
2 truck.

3 (C) A statement that, in order to receive their poststorage
4 hearing, the owners, or their agents, are required to request the
5 hearing from the impounding agency, in writing, or by telephone,
6 within 10 days of the date of the notice.

7 (6) The poststorage hearing shall be conducted within two
8 business days after receipt of the request for the hearing.

9 (7) At the hearing, the impounding agency shall release the tow
10 truck if the agency finds any of the circumstances described in
11 subdivision (b) or (e) that allow release of the tow truck by the
12 impounding agency.

13 (8) Failure of either the registered or legal owner, or his or her
14 agent, to request, or to attend, a scheduled hearing satisfies the
15 poststorage hearing requirement.

16 (9) The impounding agency shall be responsible for the costs
17 incurred for towing and storage if it is determined in the poststorage
18 hearing that reasonable grounds for the storage are not established.

19 ~~(d)~~

20 (b) The registered owner or his or her agent is responsible for
21 all towing and storage charges related to the impoundment and
22 any administrative charges authorized under Section 22850.5.

23 ~~(e)~~

24 (c) A tow truck impounded pursuant to ~~subdivision (a) or (b)~~,
25 ~~or~~ subdivision (b) or (c) of Section 22513, shall be released to the
26 legal owner of the tow truck or the legal owner's agent prior to
27 the end of the impoundment period if all of the following
28 conditions are met:

29 (1) The legal owner is a motor vehicle dealer, bank, credit union,
30 acceptance corporation, or other licensed financial institution
31 legally operating in this state or is another person, not the registered
32 owner, holding a security interest in the tow truck.

33 (2) (A) The legal owner or the legal owner's agent pays all
34 towing and storage fees related to the impoundment of the tow
35 truck. A lien sale processing fee shall not be charged to the legal
36 owner who redeems the tow truck prior to the 15th day of
37 impoundment. Neither the impounding authority nor any person
38 having possession of the tow truck shall collect from the legal
39 owner of the type specified in paragraph (1), or the legal owner's
40 agent, any administrative charges imposed pursuant to Section

1 22850.5, unless the legal owner voluntarily requested a poststorage
2 hearing.

3 (B) A person operating or in charge of a storage facility where
4 vehicles are stored for purposes of an impoundment pursuant to
5 this section shall accept a valid bank credit card or cash for
6 payment of towing, storage, and related fees by a legal or registered
7 owner or the owner's agent claiming the tow truck. A credit card
8 shall be in the name of the person presenting the card. "Credit
9 card" means "credit card" as defined in subdivision (a) of Section
10 1747.02 of the Civil Code, except, for the purposes of this section,
11 credit card does not include a credit card issued by a retail seller.

12 (C) A person operating or in charge of a storage facility
13 described in subparagraph (B) who violates subparagraph (B) shall
14 be civilly liable to the owner of the tow truck or to the person who
15 tendered the fees for four times the amount of the towing, storage,
16 and related fees, but not to exceed five hundred dollars (\$500).

17 (D) A person operating or in charge of a storage facility
18 described in subparagraph (B) shall have sufficient funds on the
19 premises of the primary storage facility during normal business
20 hours to accommodate, and make change in, a reasonable monetary
21 transaction.

22 (E) Credit charges for towing and storage services shall comply
23 with Section 1748.1 of the Civil Code. Law enforcement agencies
24 may include the costs of providing for payment by credit when
25 making agreements with towing companies on rates.

26 (3) (A) The legal owner or the legal owner's agent presents to
27 the law enforcement agency or impounding agency, or any person
28 acting on behalf of those agencies, a copy of the assignment, as
29 defined in subdivision (b) of Section 7500.1 of the Business and
30 Professions Code; a release from the one responsible governmental
31 agency, only if required by the agency; a government-issued
32 photographic identification card; and any one of the following as
33 determined by the legal owner or the legal owner's agent: a
34 certificate of repossession for the tow truck, a security agreement
35 for the tow truck, or title, whether paper or electronic, showing
36 proof of legal ownership for the tow truck. The law enforcement
37 agency, impounding agency, or any other governmental agency,
38 or any person acting on behalf of those agencies, shall not require
39 the presentation of any other documents.

1 (B) The legal owner or the legal owner's agent presents to the
2 person in possession of the tow truck, or any person acting on
3 behalf of the person in possession, a copy of the assignment, as
4 defined in subdivision (b) of Section 7500.1 of the Business and
5 Professions Code; a release from the one responsible governmental
6 agency, only if required by the agency; a government-issued
7 photographic identification card; and any one of the following as
8 determined by the legal owner or the legal owner's agent: a
9 certificate of repossession for the tow truck, a security agreement
10 for the tow truck, or title, whether paper or electronic, showing
11 proof of legal ownership for the tow truck. The person in
12 possession of the tow truck, or any person acting on behalf of the
13 person in possession, shall not require the presentation of any other
14 documents.

15 (C) All presented documents may be originals, photocopies, or
16 facsimile copies, or may be transmitted electronically. The law
17 enforcement agency, impounding agency, or any person in
18 possession of the tow truck, or anyone acting on behalf of them,
19 shall not require any documents to be notarized. The law
20 enforcement agency, impounding agency, or any person acting on
21 behalf of those agencies, may require the agent of the legal owner
22 to produce a photocopy or facsimile copy of its repossession agency
23 license or registration issued pursuant to Chapter 11 (commencing
24 with Section 7500) of Division 3 of the Business and Professions
25 Code, or to demonstrate, to the satisfaction of the law enforcement
26 agency, impounding agency, or any person in possession of the
27 tow truck, or anyone acting on behalf of them, that the agent is
28 exempt from licensure pursuant to Section 7500.2 or 7500.3 of the
29 Business and Professions Code.

30 (D) Administrative costs authorized under subdivision (a) of
31 Section 22850.5 shall not be charged to the legal owner of the type
32 specified in paragraph (1) who redeems the tow truck unless the
33 legal owner voluntarily requests a poststorage hearing. A city,
34 county, city and county, or state agency shall not require a legal
35 owner or a legal owner's agent to request a poststorage hearing as
36 a requirement for release of the tow truck to the legal owner or the
37 legal owner's agent. The law enforcement agency, impounding
38 agency, or any other governmental agency, or any person acting
39 on behalf of those agencies, shall not require any documents other
40 than those specified in this paragraph. The law enforcement agency,

impounding agency, or other governmental agency, or any person acting on behalf of those agencies, may not require any documents to be notarized. The legal owner or the legal owner's agent shall be given a copy of any documents he or she is required to sign, except for a vehicle evidentiary hold logbook. The law enforcement agency, impounding agency, or any person acting on behalf of those agencies, or any person in possession of the tow truck, may photocopy and retain the copies of any documents presented by the legal owner or legal owner's agent.

(4) A failure by a storage facility to comply with any applicable conditions set forth in this subdivision shall not affect the right of the legal owner or the legal owner's agent to retrieve the tow truck if all conditions required of the legal owner or legal owner's agent under this subdivision are satisfied.

(f)

(d) (1) A legal owner or the legal owner's agent that obtains release of the tow truck pursuant to subdivision (e) shall not release the tow truck to the registered owner of the tow truck or the person who was listed as the registered owner when the tow truck was impounded or any agents of the registered owner until the termination of the impoundment period.

(2) The legal owner or the legal owner's agent shall not relinquish the tow truck to the registered owner or the person who was listed as the registered owner when the tow truck was impounded until the registered owner or that owner's agent presents his or her valid driver's license or valid temporary driver's license, and an operator's license ~~that is in compliance with the licensing requirements adopted by the local authority under subdivision (g) of Section 21100~~, to the legal owner or the legal owner's agent. The legal owner or the legal owner's agent or the person in possession of the tow truck shall make every reasonable effort to ensure that the licenses presented are valid and possession of the tow truck will not be given to the driver who was involved in the original impoundment proceeding until the expiration of the impoundment period.

(3) Prior to relinquishing the tow truck, the legal owner may require the registered owner to pay all towing and storage charges related to the impoundment and the administrative charges authorized under Section 22850.5 that were incurred by the legal owner in connection with obtaining the custody of the tow truck.

1 (4) Any legal owner who knowingly releases or causes the
2 release of a tow truck to a registered owner or the person in
3 possession of the tow truck at the time of the impoundment or any
4 agent of the registered owner in violation of this subdivision shall
5 be guilty of a misdemeanor and subject to a civil penalty in the
6 amount of two thousand dollars (\$2,000).

7 (5) The legal owner, registered owner, or person in possession
8 of the tow truck shall not change or attempt to change the name
9 of the legal owner or the registered owner on the records of the
10 department until the tow truck is released from the impoundment.

11 ~~(g)~~
12 (e) Notwithstanding any other provision of this section, the
13 registered owner and not the legal owner shall remain responsible
14 for any towing and storage charges related to the impoundment
15 and the administrative charges authorized under Section 22850.5
16 and any parking fines, penalties, and administrative fees incurred
17 by the registered owner.

18 ~~(h)~~
19 (f) The law enforcement agency and the impounding agency,
20 including any storage facility acting on behalf of the law
21 enforcement agency or the impounding agency, shall comply with
22 this section and shall not be liable to the registered owner for the
23 improper release of the tow truck to the legal owner or the legal
24 owner's agent provided the release complies with the provisions
25 of this section. The legal owner shall indemnify and hold harmless
26 a storage facility from any claims arising out of the release of the
27 tow truck to the legal owner or the legal owner's agent and from
28 any damage to the tow truck after its release, including the
29 reasonable costs associated with defending any such claims. A law
30 enforcement agency shall not refuse to issue a release to a legal
31 owner or the agent of a legal owner on the grounds that it
32 previously issued a release.

33 SEC. 3. No reimbursement is required by this act pursuant to
34 Section 6 of Article XIII B of the California Constitution because
35 the only costs that may be incurred by a local agency or school
36 district will be incurred because this act creates a new crime or
37 infraction, eliminates a crime or infraction, or changes the penalty
38 for a crime or infraction, within the meaning of Section 17556 of
39 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

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